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IN THE
COURT OF APPEALS OF INDIANA

JEREMY SOUTHWOOD,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 71A03-0607-PC-292
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John A. Marnocha, Judge
Cause No. 71D02-0406-FD-616

February 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jeremy Southwood appeals the trial court's finding that he violated his probation.

We affirm.

ISSUE

Whether sufficient evidence supports the trial court's finding that Southwood violated his probation.

FACTS

On December 15, 2004, the trial court found that Southwood had committed the offense of intimidation, a class D felony, entered judgment of conviction, and imposed a sentence of eighteen months. It suspended twelve months of that sentence and ordered one year of probation. Southwood's probationary period began on March 9, 2005.

At approximately 2:00 a.m. on September 14, 2005, Mishawaka Police Department received a report about a possible fight. Three officers were dispatched to the area of York and Oakside. Corporal Suradski arrived first and started on foot down a path to a wooded area from which a male voice could be heard yelling. Officers Cynthia Reed and Kimberly Shelton then arrived at the intersection and followed Suradski. The male voice yelled "F*** you, f*** those flashlights," and "Hey you with the flashlight, I'll come over and kick your f***ing asses I ain't afraid to go to jail." (Tr. 26). The sound of the voice came from across a creek. Because the path ended at the creek, the three retraced their steps. Both Suradski and Reed then went south.

Reed "took the path to the east and came to a camp fire with two male whites sitting in lawn chairs" and "alcohol bottles all over the place. (Tr. 14). Southwood "was

sitting probably ten feet" from where she stopped. (Tr. 14-15). Southwood rose "immediately," having "trouble getting out of his chair," and "started stumbling" toward her. (Tr. 15). Reed yelled, "Stop, get back," but Southwood "proceeded to pick up one of the lawn chairs and come at [her]." Southwood "was yelling at [her], "F*** you cops, I ain't afraid . . . I ain't afraid of no f***ing cops, I'll kick your f***ing ass." *Id.* When he was "about six feet from her," Reed again yelled, "Stop, get back," and it was "at that point [Southwood] raised his chair over his head in a threatening manner, and continu[ed] to walk towards [her]." *Id.* When Southwood was within "about three" feet of Reed, she heard Shelton, who was behind her, yell out that she was going to "Tas[e]" Southwood. (Tr. 15). Southwood then threw the chair at Reed, who deflected it with her left hand, and both officers then fired Taser probes at Southwood.

Later on September 14, 2005, the State charged Southwood with battery on an officer, a class A misdemeanor. On November 4, 2005, the probation department filed a petition to revoke Southwood's probation, alleging that Southwood had violated the conditions of his probation by *inter alia* having committed a new criminal offense.

The trial court held an evidentiary hearing on March 3, 2006. Both Reed and Shelton testified to the foregoing facts about the incident on September 14, 2005. Southwood's brother Joshua testified that he had been the second male sitting in a lawn chair by the campfire that night. Joshua admitted that Southwood was "running up at the cops . . . with the chair," holding the chair "up over his head," but testified that he "didn't . . . see him throw the chair" and believed he had "kind of dropped it . . . after he got Tased." (Tr. 44, 45). Reed specifically testified that Southwood had not simply dropped

the chair when hit by the Taser dart but "threw the chair at [her]." (Tr. 16). Shelton testified that she had seen Southwood within six feet of Reed, with the lawn chair "raised in his hand . . . walking toward" Reed; that Southwood "had already thrown" the lawn chair when struck by the Taser probes, (Tr. 28); and that the "chair was coming" at Reed "before the Taser probes" struck him. (Tr. 33).

The trial court noted that a condition of Southwood's probation was that he "not commit any criminal offenses while on probation." (Tr. 50). It then found that the State had met its burden of proving that on September 14, 2005, Southwood "while on probation did commit the crime of battery." *Id.* It then sentenced Southwood to serve the balance of the eighteen-month sentence, with 91 days of credit time.

DECISION

We have summarized the law applicable upon a challenge to the revocation of probation as follows:

> Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. *Bonner v. State*, 776 N.E.2d 1244, 1247 (Ind. Ct. App. 2002), *trans. denied* (2003) (citing *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999)). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. *Id*.
>
> A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999); *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), *trans. denied*. Therefore, upon finding that a probationer has violated a condition of probation, a court may either continue probation, with or without modifying or enlarging the conditions, extend probation for not more than one year beyond the original probationary period, or order execution of the initial sentence that was suspended. IC 35-38-2-3(g).

> A probation revocation hearing must be a narrow inquiry with flexible procedures that allow a court to exercise its "inherent power to enforce obedience to its lawful orders." *Cox*, 706 N.E.2d at 550. The decision whether to revoke probation is a matter within the sound discretion of the trial court. *Dawson v. State*, 751 N.E.2d 812, 814 (Ind. Ct. App. 2001). A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Cox*, 706 N.E.2d at 551 (citing *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995)); *McKnight v. State*, 787 N.E.2d 888, 893 (Ind. Ct. App. 2003). Generally, "violation of a single condition of probation is sufficient to revoke probation." *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*.
>
> On review, our court considers only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. *Packer v. State*, 777 N.E.2d 733, 740 (Ind. Ct. App. 2000); *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied.* If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Cox*, 706 N.E.2d at 551; *Packer*, 777 N.E.2d at 740; *Piper*, 770 N.E.2d at 882.

Brabandt v. State, 797 N.E.2d 855, 860 -61(Ind. Ct. App. 2003).

Southwood argues that the State provided "insufficient evidence to meet [the] burden" of proving by a preponderance of the evidence that he committed a new offense. Southwood's Br. at 3. Specifically, he asserts that "it was close as to whether the chair was thrown or dropped." *Id.* at 4. His argument necessarily asks that we reweigh the evidence presented by and the credibility of Joshua, Officer Reed, and Officer Shelton. This we do not do. *See Brabandt*, 797 N.E.2d at 861.

When a person knowingly or intentionally touches, in a rude, insolent, or angry manner, a law enforcement officer while that officer is engaged in the execution of her official duty, the person commits the offense of battery as a class A misdemeanor. Ind. Code § 35-42-2-1(a)(1)(B). Further, it has long been the law in Indiana that such

unlawful touching includes the "put[ting] in motion" by the defendant of an object that strikes the victim. *Reed v. State*, 255 Ind. 298, 263 N.E.2d 719, 722 (1970) (citing *Kirland v. State*, 43 Ind. 146, 153 (1873)). Both officers testified that Southwood, while yelling obscene epithets, threw the lawn chair at Reed, and that the lawn chair struck Reed. Therefore, there was substantial evidence of probative value to support the trial court's conclusion that Southwood had violated the term of his probation that forbade the commission of a new criminal offense. *See Brabandt*, 797 N.E.2d at 861.

Affirmed.

BAKER, J., and ROBB, J., concur.